

Message Text

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ACTION STR-07

INFO OCT-01 IO-13 ISO-00 STRE-00 AGRE-00 CEA-01
CIAE-00 COME-00 DODE-00 EB-08 FRB-03 H-01 INR-10
INT-05 L-03 LAB-04 NSAE-00 NSC-05 PA-01 CTME-00
AID-05 SS-15 ITC-01 TRSE-00 ICA-11 SP-02 SOE-02
OMB-01 DOE-15 AF-10 ARA-10 EA-10 EUR-12 NEA-11
OIC-02 JUSE-00 DOEE-00 SSO-00 /169 W
-----072021 281858Z /72

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FM USMISSION GENEVA
TO SECSTATE WASHDC PRIORITY 1442

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USMTN

STR FOR ACTION

STR PASS CODEL

E.O. 11652: N/A
TAGS: MTN, ETRD
SUBJECT: DISPUTE SETTLEMENT IN STANDARDS CODE

REF: (A) GENEVA 8470; (B) STATE 159894

1. GATT SECRETARIAT CHAIRMAN OF STANDARDS SUBGROUP
DISTRIBUTED A REVISED VERSION OF HIS TEXT ON DISPUTE
SETTLEMENT. MANY OF THE U.S. COMMENTS ARE REFLECTED
IN THE NEW DOCUMENT. NOTE THAT PARA 21(D) STILL
PROVIDES FOR REFERRAL TO THE COMMITTEE BY "AN ADHERENT"
OR "ALL ADHERENTS" PARTY TO A DISPUTE. PARA 21(H) IS
A NEW ADDITION ALONG THE LINES OF IDEAS OF THE CANADIAN
DELEGATION.

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2. THE TEXT IS AS FOLLOWS:

QUOTE:

20. INSTITUTIONS

(A) THERE SHALL BE ESTABLISHED A COMMITTEE ON TECHNICAL BARRIERS TO TRADE COMPOSED OF REPRESENTATIVES FROM EACH OF THE ADHERENTS TO THIS CODE (REFERRED TO HEREIN AS "THE COMMITTEE"). THE COMMITTEE SHALL ELECT ITS OWN CHAIRMAN AND SHALL MEET AS NECESSARY, BUT NOT LESS THAN ONCE A YEAR FOR THE PURPOSE OF AFFORDING ADHERENTS THE OPPORTUNITY OF CONSULTING ON ANY MATTERS RELATING TO THE OPERATION OF THE CODE OR THE FURTHERANCE OF ITS OBJECTIVES. THE GATT SECRETARIAT SHALL ACT AS THE SECRETARIAT TO THE COMMITTEE.

(B) THE COMMITTEE MAY SET UP SUBSIDIARY BODIES AS APPROPRIATE.

(C) IN CARRYING OUT THEIR FUNCTIONS, THE COMMITTEE AND ITS SUBSIDIARY BODIES MAY CONSULT WITH AND SEEK INFORMATION FROM ANY SOURCE THEY DEEM APPROPRIATE.

21. CONSULTATION AND DISPUTE SETTLEMENT

(A) IT IS THE FIRM INTENTION OF ADHERENTS THAT ANY DISPUTES UNDER THIS CODE SHALL BE EXPEDITIOUSLY RESOLVED.

(B) EACH ADHERENT SHALL ACCORD SYMPATHETIC CONSIDER-LIMITED OFFICIAL USE

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ATION TO, AND SHALL AFFORD ADEQUATE OPPORTUNITY FOR, CONSULTATION REGARDING SUCH REPRESENTATIONS AS MAYBE MADE BY ANOTHER ADHERENT WITH RESPECT TO ANY MATTER AFFECTING THE OPERATION OF THIS CODE.

(C) IF ANY ADHERENT CONSIDERS THAT ANY BENEFIT ACCRUING TO IT, DIRECTLY OR INDIRECTLY, UNDER THIS CODE IS BEING NULLIFIED OR IMPAIRED, OR THAT THE ACHIEVEMENT OF ANY OBJECTIVE OF THE CODE IS BEING IMPEDED BY ANOTHER ADHERENT OR ADHERENTS, THE ADHERENTS MAY, WITH A VIEW TO REACHING A SATISFACTORY RESOLUTION OF THE MATTER, MAKE WRITTEN REPRESENTATIONS TO THE OTHER ADHERENT OR ADHERENTS WHICH IT CONSIDERS TO BE CONCERNED. EACH ADHERENT SHALL AFFORD SYMPATHETIC CONSIDERATION TO AND ADEQUATE OPPORTUNITY FOR PROMPT CONSULTATION REGARDING SUCH REPRESENTATIONS AS MAYBE MADE BY ANOTHER ADHERENT.

(D) IF, NOTWITHSTANDING CONSULTATION AS PROVIDED FOR UNDER PARAGRAPH (B) OR (C) ABOVE, NO MUTUALLY SATISFACTORY SOLUTION HAS BEEN REACHED BETWEEN THE ADHERENTS CONCERNED WITHIN A REASONABLE PERIOD OF TIME

THE MATTER MAY BE REFERRED TO THE COMMITTEE BY BEGIN
BRACKETS AN ADHERENT WHICH IS END BRACKETS BEGIN BRACK-
ETS ALL ADHERENTS WHICH ARE END BRACKETS PARTY TO THE
DISPUTE.

(E) THE COMMITTEE SHALL PROMPTLY BEGIN BRACKETS
E.G. WITHIN 30 DAYS END BRACKETS INVESTIGATE ANY
MATTER SO REFERRED TO IT WITH A VIEW TO FACILITATING
A MUTUALLY SATISFACTORY SOLUTION.

(F) IF NO MUTUALLY SATISFACTORY SOLUTION HAS BEEN
REACHED IN ACCORDANCE WITH (E) ABOVE BEGIN BRACKETS
WITHIN 45 DAYS FROM THE TIME THAT THE MATTER WAS
REFERRED TO IT END BRACKET, THE COMMITTEE SHALL TAKE
APPROPRIATE ACTION AIMED AT THE POSITIVE RESOLUTION
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TRADE LIBERALIZATION. ACCORDINGLY, THE COMMITTEE
SHALL, AS APPROPRIATE,

(I) MAKE A STATEMENT CONCERNING THE FACTS OF THE
MATTER,

(II) MAKE A RULING,

(III) MAKE RECOMMENDATIONS TO ONE OR MORE ADHERENTS,
AND

(IV) IF IT CONSIDERS THAT THE CIRCUMSTANCES ARE
SERIOUS ENOUGH TO JUSTIFY SUCH ACTION, AUTHORIZE
ONE OR MORE ADHERENTS TO SUSPEND, IN RESPECT OF OTHER
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ADHERENTS, SUCH OBLIGATIONS UNDER THIS CODE AS IT
DETERMINES IN THE CIRCUMSTANCES.

(G) BEGIN BRACKETS IF, HAVING TAKEN APPROPRIATE
ACTION IN ACCORDANCE WITH (F) ABOVE, THE COMMITTEE
CONSIDERS THAT THE CIRCUMSTANCES ARE SERIOUS ENOUGH
TO JUSTIFY THE SUSPENSION OF CONCESSIONS OR OTHER
OBLIGATIONS UNDER THE GENERAL AGREEMENT, IT MAY
RECOMMEND TO THE CONTRACTING PARTIES THAT IN ACCORD-
ANCE WITH THE PROVISIONS OF PARAGRAPH 2 OF ARTICLE
XXIII, THEY AUTHORIZE A CONTRACTING PARTY TO SUSPEND
SUCH CONCESSIONS OR OTHER OBLIGATIONS UNDER THE
GENERAL AGREEMENT AS THEY DETERMINE TO BE APPROPRIATE
IN THE CIRCUMSTANCES. END BRACKETS

(H) BEGIN BRACKETS IF THE APPLICATION TO ANY
ADHERENT OF ANY OBLIGATION IS IN FACT SUSPENDED,
THAT ADHERENT SHALL BE FREE NOT LATER THAN 60 DAYS
AFTER SUCH ACTION IS TAKEN TO GIVE NOTICE TO THE
CHAIRMAN OF ITS INTENTION TO WITHDRAW FROM THIS CODE
AND SUCH WITHDRAWAL SHALL TAKE EFFECT UPON THE
SIXTIETH DAY FOLLOWING THE DAY ON WHICH SUCH NOTICE
IS RECEIVED BY HIM. END BRACKETS

(I) BEGIN BRACKETS IF ANY ADHERENT WHICH IS PARTY
TO THE DISPUTE SO REQUESTS, THE CHAIRMAN, ACTING
ON BEHALF OF THE COMMITTEE, SHALL PROMPTLY ESTABLISH
A PANEL TO INVESTIGATE THE FACTS OF THE MATTER AND
THE APPLICABILITY OF THE RELEVANT PROVISIONS OF
THE CODE AND TO ASSIST THE COMMITTEE TO PERFORM THE
TASKS SET OUT IN (E) AND (F) ABOVE. END BRACKET

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BEGIN BRACKET THE COMMITTEE MAY ESTABLISH SUBSIDIARY BODIES, E.G. PANELS OR WORKING PARTIES, TO ASSIST IT TO PERFORM THE TASKS SET OUT IN (E) AND (F) ABOVE. IN SELECTING ITS PROCEDURES THE COMMITTEE SHALL TAKE INTO ACCOUNT BOTH THE CUSTOMARY PRACTICE OF GATT AND WHETHER THE DISPUTE RELATES SOLELY TO COMMERCIAL POLICY MATTERS OR WHETHER IT ALSO RELATES TO QUESTIONS OF A TECHNICAL NATURE. END BRACKETS

(J) BEGIN BRACKETS THE COMMITTEE SHALL, NOT LATER THAN FOUR YEARS AFTER THIS CODE COMES INTO OPERATION, EXAMINE THE EFFECTIVENESS OF THE PROVISIONS CONTAINED IN THIS SECTION AND DECIDE WHETHER MORE DETAILED PROCEDURAL PROVISIONS ARE REQUIRED. END BRACKETS

OR

BEGIN BRACKETS THE FOLLOWING PROCEDURES SHALL APPLY TO PANELS ESTABLISHED IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION:

(I) PANELS SHALL BE NORMALLY OF THREE BUT NOT MORE THAN FIVE MEMBERS. PANEL MEMBERS FOR A SPECIFIC CASE SHALL BE SELECTED BY THE CHAIRMAN AFTER CONSULTATION WITH THE PARTIES TO THE DISPUTE, WITH A VIEW TO ENSURING THE INDEPENDENCE OF THE MEMBERS, THE PRESENCE OF APPROPRIATE TECHNICAL EXPERTISE AND A SUFFICIENTLY WIDE SPECTRUM OF EXPERIENCE.

(II) IN ORDER TO FACILITATE THE CONSTITUTION OF PANELS, THE CHAIRMAN SHALL MAINTAIN A LIST OF PERSONS QUALIFIED IN THE FIELDS OF TRADE RELATIONS AND OTHER MATTERS COVERED BY THIS CODE, WHO MAY BE GOVERNMENTAL OR NON-GOVERNMENTAL REPRESENTATIVES AND WHO WOULD BE AVAILABLE FOR SERVING ON PANELS. IN THIS CONNEXION,
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EACH ADHERENT WOULD BE INVITED TO INDICATE AT THE BEGINNING OF EVERY YEAR TO THE CHAIRMAN THE NAME OF ONE OR TWO GOVERNMENTAL EXPERTS WHOM THEY WOULD BE WILLING TO MAKE AVAILABLE FOR SUCH WORK. PANEL MEMBERS WOULD SERVE IN THEIR INDIVIDUAL CAPACITIES

AND NOT AS GOVERNMENT REPRESENTATIVES, NOR AS
REPRESENTATIVES OF ANY ORGANIZATION. GOVERNMENTS
OR ORGANIZATIONS WOULD THEREFORE NOT GIVE THEM INSTRUC-

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TIONS WITH REGARD TO MATTERS BEFORE THE PANEL.

(III) EACH PANEL SHALL DEVELOP ITS OWN WORKING
PROCEDURES. EACH PANEL SHALL MAKE AN OBJECTIVE
ASSESSMENT OF THE MATTER BEFORE IT. IT SHALL ALSO
CONSULT REGULARLY WITH THE PARTIES TO THE DISPUTE
AND MAY ENCOURAGE THEM TO DEVELOP FOR THEMSELVES A
MUTUALLY ACCEPTABLE SOLUTION. ANY ADHERENT SHALL
HAVE THE RIGHT TO BE HEARD BY A PANEL. ANY ADHERENT
SHALL RESPOND PROMPTLY AND FULLY TO ANY REQUEST
BY THE COMMITTEE OR ITS SUBSIDIARY BODIES FOR SUCH
INFORMATION AS THESE BODIES CONSIDER NECESSARY AND
APPROPRIATE. CONFIDENTIAL INFORMATION WHICH IS
PROVIDED SHALL NOT BE REVEALED WITHOUT FORMAL
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AUTHORIZATION FROM THE ADHERENT PROVIDING THE INFORMATION.

(IV) THE PANEL'S REPORT TO THE COMMITTEE SHALL BE MADE WITHIN THREE MONTHS IF POSSIBLE AND, IN ANY CASE, WITHIN SIX MONTHS. IT SHALL CONTAIN A WRITTEN STATEMENT OF THE FACTS OF THE MATTER AS THEY RELATE TO THE APPLICATION OF THE CODE, THE PANEL'S FINDINGS AND, WHERE APPROPRIATE, SUCH RECOMMENDATIONS AS THE FACTS WARRANT, TOGETHER WITH THE BASIC RATIONALE BEHIND ANY FINDINGS AND RECOMMENDATIONS. IN ORDER TO GIVE THE PARTIES AN OPPORTUNITY TO DEVELOP A MUTUALLY SATISFACTORY SOLUTION, PANELS SHALL INFORM THE PARTIES TO DISPUTES OF THEIR CONCLUSIONS BEFORE THEY ARE TRANSMITTED TO THE COMMITTEE. IN CASES IN WHICH A MUTUALLY SATISFACTORY SOLUTION HAS BEEN REACHED, THE REPORT WOULD BE CONFINED TO REPORTING THAT A SETTLEMENT HAS BEEN REACHED. END BRACKETS

(K) IF DISPUTES ARISE BETWEEN ADHERENTS RELATING TO MATTERS COVERED BY THIS CODE, ADHERENTS SHALL EXHAUST THE POSSIBILITIES FOR DISPUTE SETTLEMENT UNDER THIS CODE BEFORE AVAILING THEMSELVES OF ANY RIGHTS WHICH THEY HAVE UNDER OTHER INTERNATIONAL INSTRUMENTS.

22. SURVEILLANCE

(A) THE COMMITTEE SHALL CONDUCT AN ANNUAL REVIEW OF THE OPERATION OF THE CODE. IN THIS REVIEW, PARTICULAR ATTENTION SHALL BE PAID TO DEVELOPMENTS WHICH AFFECT RIGHTS AND OBLIGATIONS UNDER THE CODE, TO MATTERS AFFECTING THE INTERESTS OF DEVELOPING ADHERENTS, AND TO MATTERS WHICH HAVE BEEN SUBJECT TO CONSULTATION, CONCILIATION OR DISPUTE SETTLEMENT PROCEDURES LAID

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DOWN IN THE CODE.

(B) EACH ADHERENT SHALL REPORT ANNUALLY TO THE COMMITTEE ON DEVELOPMENTS RELATING TO THE OPERATION OF THE CODE, INCLUDING ITS OWN POLICIES AND PRACTICES. THE GATT SECRETARIAT SHALL MAKE AN ANNUAL REPORT ON RELEVANT ACTIVITIES OF OTHER INTERNATIONAL ORGANIZATIONS.

(C) THE COMMITTEE SHALL ISSUE AN ANNUAL WRITTEN REPORT ON ITS PROCEEDINGS.

END QUOTE.

3. DRAFTED BY WALLAR. MCDONALD

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Message Attributes

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Decaption Note:
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Disposition Approved on Date:
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Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: b654e57e-c288-dd11-92da-001cc4696bcc
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Review Content Flags:
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Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2183163
Secure: OPEN
Status: NATIVE
Subject: DISPUTE SETTLEMENT IN STANDARDS CODE
TAGS: ETRD, MTN
To: STATE
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/b654e57e-c288-dd11-92da-001cc4696bcc
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